(1)

Supreme Court, U.S.
FILED

961786 MAY 9 1997

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

PAUL KRUEGER,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

JAMES E. RYAN
Attorney General of Illinois

BARBARA A. PREINER
Solicitor General of Illinois

WILLIAM L. BROWERS
(Counsel of Record)
LISA ANNE HOFFMAN
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3000

Attorneys for Petitioner

Printed by Authority of the State of Illinois (P.O. 36785—55—5-9-97)

35 pp

QUESTION PRESENTED FOR REVIEW

Whether the good-faith exception to the exclusionary rule as set forth in *Illinois v. Krull* should have been applied in this case where police officers relied upon a warrant issued pursuant to an Illinois statute later declared unconstitutional.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

OPINION BELOW 1

JURISDICTION OF THE COURT 1

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 5

CONCLUSION 9

APPENDIX A A-1

APPENDIX B B-1

TABLE OF AUTHORITIES

Cases PAGE

Enterprise Irrigation District v. Farmers Mutual Canal Company, 243 U.S. 157, 37 S.Ct. 318, 61 L.Ed. 644 (1917) 5

Illinois v. Krull, 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987) . . . . . *passim*

People v. Krueger, 175 Ill.2d 60, 675 N.E.2d 613 (1996) 7

People v. Tisler, 103 Ill.2d 226, 469 N.E.2d 147 (1984) 6

United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) 7, 8

Constitutional Provisions and Statutes

United States Constitution, Amend. IV 2

Illinois Constitution 1970, Art. I, Sec. 6 . . . . . 2, 6

720 ILCS 570/401 3

720 ILCS 570/402 3

725 ILCS 5/108-8(b) 1

Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Illinois.

OPINION BELOW

The Supreme Court of Illinois issued its opinion in this case on December 19, 1996. In its decision the majority of the court, with one justice dissenting, affirmed the trial court's order declaring 725 ILCS 5/108-8(b)(2) unconstitutional, holding that subsection (b)(2) of the statute violates the Fourth Amendment guarantee against unreasonable search and seizure. Additionally, the majority held that the Illinois Constitution prohibits the application of the good-faith exception to the exclusionary rule recognized in *Illinois v. Krull*.

JURISDICTION

The opinion of the Supreme Court of Illinois, affirming the order of the Circuit Court, was issued December 19, 1996. A Petition for Rehearing was filed and the Illinois Supreme Court denied that petition on February 3, 1997. Although this petition is not filed within ninety days of that order denying rehearing, Petitioner filed an application for an extension of time for filing petition for writ of certiorari that remains pending with this Court.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3), since in the proceedings in the state courts of Illinois the respondent has asserted an alleged violation of his rights arising under the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV of the United States Constitution reads:

The right of the People to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Art. I, Sec. 6 of the Illinois Constitution 1970 reads:

The People shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF THE CASE

On November 15, 1995, Special Agent J. Diehl of the Lake County Metropolitan Enforcement Group and a confidential informant, appeared before Circuit Court Judge Terrence Brady and presented to him a complaint for a search warrant. (C. 28). The complaint requested a search of the Respondent and his home, including the detached garage located on the property. (C.28). The purpose of the warrant was to seize cocaine as well as other specific items related to the use and sale of controlled

substances in violation of 720 ILCS 570/401 and 720 ILCS 570/402. (C. 28).

Special Agent Diehl alleged that he had probable cause to believe that Respondent was trafficking cocaine from this residence. Specifically, Special Agent Diehl stated that he and John Doe conducted a controlled purchase of cocaine from Respondent's residence. (C. 29). Special Agent Diehl learned that the cocaine had been stored in Respondent's residence or garage as recently as two months prior to the controlled purchase. (C. 29). Furthermore, John Doe advised Special Agent Diehl that Respondent kept a firearm in the residence. (C. 29).

Because Respondent possessed a firearm, Judge Brady found that exigent circumstances existed and, pursuant to 725 ILCS 5/108-8(b), authorized police to enter Respondent's residence without first knocking and announcing their office. (C. 31). On the morning of November 16, 1996, in compliance with the no-knock warrant issued by Judge Brady, the police entered Respondent's residence. Respondent was subsequently arrested and charged with armed violence, unlawful possession of a controlled substance, and unlawful possession of a controlled substance with intent to deliver. (C. 1-3). On November 22, 1996, a Grand Jury for Lake County, Illinois indicted the Respondent. (C. 10-13).

On January 5, 1996, Respondent filed a Motion to Quash Arrest and Suppress Evidence alleging that the search of Respondent's residence pursuant to the search warrant violated Respondent's right to be free from unreasonable search and seizure as guaranteed by the Fourth Amendment of the Constitution of the United States. (C. 26). After a hearing on the matter, the court

granted Respondent's motion. (C. 34; R. 1-37). Petitioner then filed a Motion to Reconsider which was also denied after a hearing on the matter. (C. 37-40; R. 38-57). On January 25, 1996, the court concluded another hearing in which the circuit judge determined that the proper forum for appeal would be the Supreme Court of Illinois because he had declared unconstitutional the Illinois statute authorizing law enforcement officers' entry without first knocking and announcing. (725 ILCS 5/108-8(b)).

The Supreme Court of Illinois affirmed the circuit court decision on December 19, 1996, finding that the statute at issue failed to establish an exigent circumstance sufficient to justify entry without knocking and announcing. The Supreme Court of Illinois further held that the good faith exception to the exclusionary rule recognized in *Illinois v. Krull*, 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987), did not apply to the warrant, as "the *Krull* good-faith exception does not comport with" a section of the Illinois Constitution. The dissenting justice would apply the *Krull* good faith exception and reverse the order suppressing evidence because the warrant relied upon is defective only because the statute on which it depends was declared unconstitutional, and the majority failed to cite a valid ground for distinguishing the language of the Illinois Constitution from the United States Constitution. Petitioner now timely petitions this Court for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

The decision of the Illinois Supreme Court in this case purports to rely upon the Illinois Constitution of 1970 to circumvent this Court's decision in *Illinois v. Krull*, 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987). Apparently dissatisfied with the majority holding in *Krull*, the Illinois Supreme Court creates a fictional breadth to the Illinois Constitution that permits a disregard for the good-faith exception announced in *Krull*. One cannot help but note that *Krull* itself arose in Illinois. This Court's jurisdiction in that case necessarily flowed from the fact that the Illinois courts viewed the question as one of federal, rather than state, constitutional law. No relevant intervening changes in the Illinois Constitution have been made since the decision in *Krull*. Petitioner asserts that the "reliance" on article I, sec. 6 of the Illinois Constitution of 1970 and on the dissenting opinion in *Krull* offend the authority of this Court, and make this matter appropriate for review.

The jurisdiction of this Court is plain where a non-Federal ground upon which a state court decision rests is "so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question." *Enterprise Irrigation District v. Farmers Mutual Canal Company*, 243 U.S. 157, 37 S.Ct. 318, 321, 61 L.Ed. 644 (1917). The instant case presents such a situation. The state constitutional bases upon which the Illinois Supreme Court majority rests its holding are entirely unfounded and unsupported in Illinois law.

Illinois Supreme Court interpretations of article I, sec. 6 of the Illinois Constitution of 1970 have determined

that "the protection against unreasonable searches under the Illinois Constitution is measured by the same standards as are used in defining the protection against unreasonable searches contained in the fourth amendment to the United States Constitution." *People v. Tisler*, 103 Ill.2d 226, 469 N.E.2d 147, 156 (1984). Petitioner acknowledges that article I, sec. 6 of the Illinois Constitution does include protections not found in the fourth amendment to the United States Constitution, but the additional provisions protect Illinois citizens from "invasions of privacy or interceptions of communications by eavesdropping devices or other means." Ill. Const. 1970, Art. I, Sec. 6. This expanded protection does not speak to the issue presented in the instant case. Indeed, the drafters of the additional language in the 1970 Illinois Constitution made clear to voters that the amended version of section 6 left "[t]he restrictions on warrants . . . unchanged." *Tisler*, 469 N.E.2d at 155, citing 6 Record of Proceedings, Sixth Illinois Constitutional Convention 2683.

The Illinois Supreme Court set forth provisions for departing from United States Supreme Court interpretations of the Federal Constitution in favor of reliance on the Illinois Constitution in *Tisler*:

> "We must find in the language of our constitution, or in the debates and the committee reports of the constitutional convention, something which will indicate that the provisions of our constitution are intended to be construed differently than are similar provisions in the Federal Constitution, after which they are patterned." 103 Ill.2d at 245.

As the dissenting justice of the Illinois Supreme Court noted in the instant case, "the majority [in *Krueger*] does

not point to anything in either the text or history of our state constitution that would warrant this court in reaching a result different from the one reached by the United States Supreme Court in *Krull*." *People v. Krueger*, 175 Ill.2d 60, 675 N.E.2d 604, 613 (1996).

Further supporting Petitioner's contention that the *Krueger* decision was unfounded and written to circumvent Federal review is the fact that the Illinois Supreme Court disregarded the *Krull* good-faith exception without fully examining it. The *Krull* majority carved out exceptions to its good-faith exception, stating:

> "A statute cannot support objectively reasonable reliance if, in passing the statute, the legislature wholly abandoned its responsibility to enact constitutional laws. Nor can a law enforcement officer be said to have acted in good-faith reliance upon a statute if its provisions are such that a reasonable officer should have known that the statute was unconstitutional."

Krull, 107 S.Ct. 1160, 1170. In *Krueger*, the Illinois Supreme Court made no effort to justify its departure from *Krull* by means of one of *Krull's* own exceptions. There is no assertion in *Krueger* that the legislature wholly abandoned its responsibility to enact constitutional laws, nor is there any suggestion that the provisions of the subject statute were such that a reasonable officer should have known that the statute was unconstitutional. The decision relies on an adoption of the reasoning of Justice O'Connor's dissent and a manufactured conflict with the Illinois Constitution.

The decision of this Court in *Krull*, premised directly on the decision in *United States v. Leon*, 468 U.S. 897,

104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) which first recognized the "good faith" exception, makes it clear that police may rely in "good faith" on legislative enactments which are subsequently deemed unconstitutional. In the instant case, police executed a search warrant issued by a circuit court judge pursuant to a duly enacted statute. Neither the judge who issued the warrant nor the police who executed it had reason to suspect that the statute would subsequently be held unconstitutional. This is precisely the situation contemplated by the good-faith exception in *Krull*. The Illinois Supreme Court's refusal to apply the exception is unwarranted, and its reliance on the Illinois Constitution without specific support is disingenuous. Petitioner requests that this Court grant certiorari to examine the applicability of its holding in *Krull* to this case and further requests that the judgment of the Supreme Court of Illinois be reversed.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a Writ of Certiorari be issued to review the decision of the Supreme Court of the State of Illinois and, upon review, to reverse that court's decision in this case.

Respectfully submitted,

JAMES E. RYAN
Attorney General of Illinois

BARBARA A. PREINER
Solicitor General of Illinois

WILLIAM L. BROWERS
(Counsel of Record)
LISA ANNE HOFFMAN
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3000

Attorneys for Petitioner

LAURA GESTRIN, a senior law student at John Marshall Law School, assisted in the research and preparation of this Petition.

APPENDICES

APPENDIX A

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellant,
v.
PAUL KRUEGER,
Appellee.

Docket No. 80486

SUPREME COURT OF ILLINOIS

175 Ill. 2d 60; 675 N.E.2d 604; 221 Ill. Dec. 409

December 19, 1996, Filed

CHIEF JUSTICE BILANDIC delivered the opinion of the court:

The central issue in this appeal is whether section 108-8(b)(2) of the "no-knock" statute (725 ILCS 5/108-8(b)(2) (West 1994)) violates constitutional guarantees against unreasonable searches and seizures. We answer in the affirmative. We next hold that the Illinois Constitution of 1970 prohibits the application of the good-faith exception to the exclusionary rule recognized in Illinois v. Krull, 480 U.S. 340, 94 L. Ed. 2d 364, 107 S. Ct. 1160 (1987).

FACTS

On November 15, 1995, an agent of the Lake County Metropolitan Enforcement Group and an informant identified as John Doe appeared before a judge of the circuit court of Lake County and presented a complaint for a search warrant. The complaint requested a warrant to

search the defendant, Paul Krueger, and his home for the purpose of seizing cocaine and other items related to the sale of controlled substances.

According to the affidavit signed by the agent and John Doe, they had conducted a controlled purchase of cocaine from the defendant at his residence within the last 72 hours. John Doe also attested that he had purchased cocaine from the defendant on prior occasions and the defendant told him that he keeps guns in his home. John Doe had personally seen one firearm in the defendant's home, sometime within the previous two months.

The circuit judge issued a warrant authorizing the police to search the defendant and his home. The judge further authorized the police to enter the defendant's home without knocking and announcing their office. The judge found that an unannounced entry was permitted under the no-knock statute (725 ILCS 5/108-8(b) (West 1994)) because the defendant was known to keep a firearm there. Subsection (b)(2) of the statute classified the prior possession of a firearm as an exigent circumstance (725 ILCS 5/108-8(b)(2) (West 1994)), which authorized a no-knock entry.

The next morning police forcibly entered the defendant's home without knocking and announcing their office. The defendant was arrested and later charged with unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 1994)), unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 1994)), and armed violence (720 ILCS 5/33A-2 (West 1994)), based on evidence seized during the search.

On January 5, 1996, the defendant filed a motion to quash his arrest and suppress evidence. The parties stip-

ulated to the above facts and asked the circuit court to rule on the motion as a matter of law. In the motion, the defendant contended that the mere presence of a firearm in his home did not constitute an exigent circumstance, which would excuse the knock-and-announce requirement. He thus asserted that the police officers' unannounced entry into his home violated his constitutional rights. The circuit court of Lake County agreed and granted the defendant's motion to quash his arrest and suppress evidence.

Upon a request for clarification by the State, the circuit court declared subsection (b)(2) of the no-knock statute to be unconstitutional. The State then argued that the good-faith exception to the exclusionary rule recognized in Illinois v. Krull, 480 U.S. 340, 94 L. Ed. 2d 364, 107 S. Ct. 1160 (1987), should apply because the officers, in making their unannounced entry, were acting in objectively reasonable reliance on a statute later declared to be unconstitutional. The circuit court declined to follow Krull based on People v. McGee, 268 Ill. App. 3d 32, 205 Ill. Dec. 883, 644 N.E.2d 439 (1994), where our appellate court held that to do so would violate the Illinois Constitution.

This direct appeal by the State followed. 134 Ill. 2d Rule 603. We now affirm the circuit court's judgment.

ANALYSIS

I

The State contends that the circuit court erred in granting the defendant's motion to quash his arrest and suppress evidence. According to the State, the police

were not required to knock and announce their office before entering the defendant's home because they had a warrant issued pursuant to subsection (b)(2) of the no-knock statute authorizing their unannounced entry.

The defendant counters that subsection (b)(2) of the no-knock statute contravenes the fourth and fourteenth amendments to the United States Constitution and article I, section 6, of the Illinois Constitution of 1970. He asserts that subsection (b)(2) unconstitutionally classifies the mere presence of a firearm in a home as an exigent circumstance. He therefore maintains that the officers' unannounced entry into his home based on subsection (b)(2) violated his constitutional rights.

A circuit court's ruling on a motion to quash arrest and suppress evidence generally is subject to reversal only if manifestly erroneous. People v. Saechao, 129 Ill. 2d 522, 534, 136 Ill. Dec. 59, 544 N.E.2d 745 (1989). This case, however, involves the circuit court's application of the law to uncontroverted facts. Consequently, this case presents a question of law for which we conduct de novo review. See People v. Dilworth, 169 Ill. 2d 195, 201, 214 Ill. Dec. 456, 661 N.E.2d 310 (1996).

Section 108-8(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/108-8(b) (West 1994)), the "no-knock" statute, purports to set forth the circumstances under which law enforcement officials may execute a warrant by entering a dwelling without first knocking and announcing their office. The subsection of the statute at issue in this case, subsection (b)(2), provides:

> "(b) Upon a finding by the judge issuing the warrant that any of the following exigent circumstances exist, the judge may order the person executing the war-

rant to make entry without first knocking and announcing his office:

* * *

(2) the prior possession of firearms by an occupant of the building within a reasonable period of time[.]" 725 ILCS 5/108-8(b)(2) (West 1994).

Subsection (b)(2) authorizes the judge issuing a warrant to order police to make a no-knock entry based solely on the so-called exigent circumstance of an occupant's prior possession of firearms within a reasonable time period. In the present case, there is no dispute that subsection (b)(2) was fully complied with when the circuit judge who issued the warrant ordered police to make a no-knock entry into the defendant's home based solely on the circumstance that the defendant was known to keep a firearm there. The issue before us is whether subsection (b)(2) violates the federal or state constitutions (U.S. Const., amends. IV, XIV; Ill. Const. 1970, art. I, § 6), as the defendant claims.

The fourth and fourteenth amendments to the United States Constitution provide that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" shall not be violated by government officials. U.S. Const., amend. IV; see Elkins v. United States, 364 U.S. 206, 213, 4 L. Ed. 2d 1669, 1675, 80 S. Ct. 1437, 1442 (1960) (this fourth amendment prohibition is applicable to state officials through the fourteenth amendment). Similarly, article I, section 6, of the Illinois Constitution of 1970 guarantees that the "People shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches [and] seizures." Ill. Const. 1970, art. I, § 6. The language of the two constitutional pro-

visions concerning unreasonable searches and seizures is nearly identical. Because the defendant makes no distinction between the federal and state provisions in his argument on this issue, we measure his constitutional protections under both using the same standard. See People v. Tisler, 103 Ill. 2d 226, 235-36, 243, 82 Ill. Dec. 613, 469 N.E.2d 147 (1984).

The underlying command of the fourth amendment is that searches and seizures by governmental officials be reasonable. In Wilson v. Arkansas, 514 U.S. 927, 131 L. Ed. 2d 976, 115 S. Ct. 1914 (1995), the United States Supreme Court held for the first time that part of the reasonableness inquiry under the fourth amendment is whether police complied with the knock-and-announce rule. The basic principle behind this rule is that an officer may not enter a dwelling, even pursuant to a valid warrant, without first requesting admittance and announcing the reason why the officer is there. See Wilson, 514 U.S. at ___, 131 L. Ed. 2d at 981, 115 S. Ct. at 1917. The rule's general purposes are (1) to decrease the potential for violence, as it is recognized that an unannounced breaking and entering could easily lead the occupants to take defensive measures; (2) to protect privacy as much as possible by giving the occupants notice of the impending intrusion by police and time to respond; and (3) to prevent the physical destruction of property where it is not necessary. E.g., People v. Condon, 148 Ill. 2d 96, 103, 170 Ill. Dec. 271, 592 N.E.2d 951 (1992); 1 W. LaFave & J. Israel, Criminal Procedure § 3.4(h), at 230-31 (2d ed. 1984).

The Court in Wilson traced the knock-and-announce principle from thirteenth-century England to its early widespread acceptance in the United States. Wilson, 514

U.S. at ___, 131 L. Ed. 2d at 980-82, 115 S. Ct. at 1916-18. "Given the longstanding common-law endorsement of the practice of announcement," the Court had "little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure." Wilson, 514 U.S. at ___, 131 L. Ed. 2d at 982, 115 S. Ct. at 1918. Consequently, the Court concluded that "in some circumstances an officer's unannounced entry into a home might be unreasonable" and, therefore, unconstitutional under the fourth amendment. Wilson, 514 U.S. at ___, 131 L. Ed. 2d at 982, 115 S. Ct. at ___.

The Court went on to explain that the fourth amendment's reasonableness requirement does not "mandate a rigid rule of announcement" in every situation. Wilson, 514 U.S. at ___, 131 L. Ed. 2d at 982, 115 S. Ct. at 1918. Rather, the Court recognized that there are certain circumstances under which an unannounced entry is constitutionally reasonable, such as where there is a threat of physical violence or where officers have reason to believe that evidence will be destroyed if advance notice is given. Wilson, 514 U.S. at ___, 131 L. Ed. 2d at 982-84, 115 S. Ct. at 1918-19, citing Ker v. California, 374 U.S. 23, 38-41, 10 L. Ed. 2d 726, 740-42, 83 S. Ct. 1623, 1632-34 (1963) (plurality opinion). The Court nonetheless declined to catalog all these circumstances, expressly leaving this task to the lower courts. Wilson, 514 U.S. at ___, 131 L. Ed. 2d at 984, 115 S. Ct. at 1919.

Prior to Wilson, this court considered the knock-and-announce rule in determining whether an entry preceding an arrest or a search is "constitutionally reasonable." E.g., People v. Wolgemuth, 69 Ill. 2d 154, 166, 13 Ill.

Dec. 40, 370 N.E.2d 1067 (1977). This court's decisions, like Wilson, recognize that compliance with the knock-and-announce rule is not required in every situation. According to our precedent, officers are excused from making the ordinary announcements where "exigent circumstances" exist sufficient to justify the intrusion. E.g., People v. Ouellette, 78 Ill. 2d 511, 518, 36 Ill. Dec. 666, 401 N.E.2d 507 (1979). In general, exigent circumstances encompass such considerations as danger to the police officers executing the warrant, the uselessness of the announcement, or the ease with which evidence may be destroyed. E.g., Ouellette, 78 Ill. 2d at 518.

The State contends that subsection (b)(2) survives the defendant's constitutional challenges because it recognizes a legitimate exigent circumstance. As noted above, subsection (b)(2) authorizes an unannounced entry where the judge finds that "an occupant of the building" to be searched has possessed firearms "within a reasonable period of time." 725 ILCS 5/108-8(b)(2) (West 1994). The State reasons that, where a person is known to have recently possessed firearms, the logical inference is that the officers executing the warrant will be in danger if they first knock and announce their office. This court has rejected this rationale before.

In People v. Condon, 148 Ill. 2d 96, 101, 170 Ill. Dec. 271, 592 N.E.2d 951 (1992), 12 drug enforcement agents, acting on a valid search warrant, entered a home with the aid of a battering ram. They did not knock or announce themselves in any way. The complaint on which the warrant was based noted that the two brothers who resided in the home had sold cocaine to a police informant. The informant attested that when he purchased cocaine from the brothers at their home, he saw several

weapons which were used to protect drugs and currency, as well as two closed circuit television cameras and a police scanner. In addition, an agent averred that when she arrested one brother two years earlier for drug possession, he was armed with a loaded .22-caliber Baretta semi-automatic pistol.

This court specifically rejected the State's argument that the known presence of firearms in the Condon home created an exigent circumstance justifying the no-knock entry. Following established precedent, this court held that an exigent circumstance does not result from the mere presence of firearms in the building to be searched; rather, the officers must have a reasonable belief that a weapon will be used against them if they proceed with the ordinary announcements. Condon, 148 Ill. 2d at 104-06, citing People v. Ouellette, 78 Ill. 2d 511, 520-21, 36 Ill. Dec. 666, 401 N.E.2d 507 (1979) (establishing the rule in Illinois); accord Poole v. United States, 630 A.2d 1109, 1118 (D.C. 1993) (and the many cases cited therein); see generally 1 W. LaFave & J. Israel, Criminal Procedure § 3.6(b), at 264 (2d ed. 1984) (stating that "it is not enough that the person to be arrested is known to own a weapon," in discussing exigent circumstances). The record contained no such evidence, the court found. Although the brothers were known to own and carry firearms, they were not known to be violent or to threaten to use violence. This court explained why the rule of announcement prevails in circumstances such as these, stating:

> "Indeed, the need for compliance with the knock-and-announce rule would seem to be even greater where the police know there are weapons present, but the persons involved are not known to have a

> propensity to use weapons. Any citizen in the privacy of his or her home might resort to the use of violence if threatened by a completely unexpected and unannounced entry into the home, let alone someone who is involved in the world of drugs. Again, we reiterate that the purpose of the knock-and-announce rule is to prevent what could turn out to be deadly encounters between police and citizens." Condon, 148 Ill. 2d at 107-08.

After rejecting the State's other claimed exigencies, this court held that the agents' unannounced entry into the brothers' home violated the constitutional requirements of reasonableness and suppressed the evidence resulting from the search. Condon, 148 Ill. 2d at 102-08.

Applying the precedent discussed above, we hold that subsection (b)(2) is unconstitutional. Subsection (b)(2) authorizes no-knock entries based solely on an occupant's prior possession of firearms. The above precedent establishes, however, that such entries violate the constitutional requirements of reasonableness. Given this clear conflict between subsection (b)(2) and the federal and state constitutions, subsection (b)(2) cannot stand.

We reject the State's attempt to distinguish subsection (b)(2) from Condon. The State argues that the statute is different because it provides for a neutral and detached magistrate who determines whether exigent circumstances exist in any given case. We disagree with this interpretation of subsection (b)(2). By its plain language, subsection (b)(2) defines an occupant's prior possession of firearms to be an exigent circumstance, and it authorizes a no-knock entry based solely on this so-called exigent circumstance. As our earlier discussion reveals, such an entry is not constitutionally reasonable. We thus con-

clude that the judge's participation under subsection (b)(2) does not cure its constitutional infirmities.

We note that, under Condon, a no-knock entry is constitutionally reasonable where officers have a reasonable belief that an occupant will use a firearm against them if they proceed with the ordinary announcements. Condon, 148 Ill. 2d at 104-06. The record in the present case is barren of any evidence to this effect. We therefore conclude that no exigent circumstance existed here and, as a result, the officers' unannounced entry into the defendant's home violated his constitutional rights to be free from unreasonable searches and seizures.

II

Having concluded that subsection (b)(2) is unconstitutional, we must next determine whether the evidence seized from the defendant's home should be excluded. The State argues that we should reverse the circuit court's suppression order based on the good-faith exception to the exclusionary rule recognized in Illinois v. Krull, 480 U.S. 340, 94 L. Ed. 2d 364, 107 S. Ct. 1160 (1987). We hold that the Krull good-faith exception does not comport with article I, section 6, of the Illinois Constitution of 1970.

In Krull, a bare majority of the United States Supreme Court extended the good-faith exception to the exclusionary rule first established in United States v. Leon, 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984). Krull, 480 U.S. 340, 94 L. Ed. 2d 364, 107 S. Ct. 1160. In Leon, the Court held that the fourth amendment exclusionary rule will not bar the use of evidence obtained by a police officer who reasonably relied, in objective

good faith, on a search warrant issued by a neutral and detached magistrate, but ultimately found to be unsupported by probable cause. Leon, 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405. The Krull majority broadened this good-faith exception, holding that the fourth amendment exclusionary rule does not bar the use of evidence seized by a police officer who reasonably relied, in objective good faith, on a statute that authorizes a warrantless administrative search, but the statute is later declared to be unconstitutional. Krull, 480 U.S. 340, 94 L. Ed. 2d 364, 107 S. Ct. 1160. Following the rationale set forth in Leon, the Krull Court stated that the basic purpose of the fourth amendment exclusionary rule is to deter future misconduct. The Court reasoned that the exclusionary rule's application in situations where police officers conducted a search in reliance on the authority of a statute, which is only later determined to be unconstitutional, would have little deterrent effect on future police misconduct. Krull, 480 U.S. at 347-49, 94 L. Ed. 2d at 373-75, 107 S. Ct. at 1165-67. A major underpinning of the majority's decision was its determination that legislators are not inclined to act in contravention of fourth amendment values; as a result, the majority found no evidence that the exclusionary rule is necessary to deter legislators from enacting unconstitutional statutes. Krull, 480 U.S. at 349-52, 94 L. Ed. 2d at 375-77, 107 S. Ct. at 1167-69. In the final analysis, when the Court weighed the "incremental deterrent" effect of the exclusionary rule's application in these situations against the substantial social costs exacted by the rule, it determined that the exclusionary rule must fall. Krull, 480 U.S. at 352-53, 94 L. Ed. 2d at 377, 107 S. Ct. at 1168. The Court did allow for two exceptions to Krull's

extended good-faith exception, however. It does not apply if (1) in enacting the statute, the legislature wholly abandoned its responsibility to enact constitutional laws; or (2) the statute's provisions are such that a reasonable officer should have known that the statute was not constitutional. Krull, 480 U.S. at 355, 94 L. Ed. 2d at 378-79, 107 S. Ct. at 1170.

Justice O'Connor's dissent revealed several serious flaws in the majority's decision. She pointed out that this newly created exception to the fourth amendment exclusionary rule provides a "grace period" for unconstitutional search and seizure legislation, during which time "the State is permitted to violate constitutional requirements with impunity." Krull, 480 U.S. at 361, 94 L. Ed. 2d at 382, 107 S. Ct. at 1173 (O'Connor, J., dissenting, joined by Brennan, Marshall and Stevens, JJ.). Further, Justice O'Connor did not find the majority's extension of the good-faith exception to be supported by Leon's rationale. She persuasively distinguished Leon on the following grounds. First, there is a "powerful historical basis for the exclusion of evidence gathered pursuant to a search authorized by an unconstitutional statute." Krull, 480 U.S. at 362, 94 L. Ed. 2d at 383, 107 S. Ct. at 1173 (O'Connor, J., dissenting, joined by Brennan, Marshall and Stevens, JJ.). Not only were such statutes "the core concern of the Framers of the Fourth Amendment," the exclusionary rule had regularly been applied to suppress evidence gathered under unconstitutional statutes. Krull, 480 U.S. at 362-63, 94 L. Ed. 2d at 383-84, 107 S. Ct. at 1173-74 (O'Connor, J., dissenting, joined by Brennan, Marshall and Stevens, JJ.), citing, e.g., Ybarra v. Illinois, 444 U.S. 85, 62 L. Ed. 2d 238, 100 S. Ct. 338 (1979). Second, Justice O'Connor found this history illus-

trative of the fact that the relevant state actors in Krull-legislators-often pose a serious threat to fourth amendment values. She saw a clear distinction between the legislator and the judicial officer who mistakenly issued a warrant in Leon. She noted:

> "The judicial role is particularized, fact-specific and nonpolitical. Judicial authorization of a particular search does not threaten the liberty of everyone, but rather authorizes a single search under particular circumstances. The legislative act, on the other hand, sweeps broadly, authorizing whole classes of searches, without any particularized showing. A judicial officer's unreasonable authorization of a search affects one person at a time; a legislature's unreasonable authorization of searches may affect thousands or millions and will almost always affect more than one. Certainly the latter poses a greater threat to liberty." Krull, 480 U.S. at 365, 94 L. Ed. 2d at 385, 107 S. Ct. at 1175 (O'Connor, J., dissenting, joined by Brennan, Marshall and Stevens, JJ.).

Having successfully distinguished Leon, Justice O'Connor next pointed out that "the novelty" of the majority's decision was "illustrated by the fact that [under it] no effective remedy is to be provided in the very case in which the statute at issue was held unconstitutional." Krull, 480 U.S. at 368, 94 L. Ed. 2d at 387, 107 S. Ct. at 1177 (O'Connor, J., dissenting, joined by Brennan, Marshall and Stevens, JJ.). As she noted, the lack of a remedy leaves no incentive for the aggrieved defendant to challenge the statute as unconstitutional. Justice O'Connor last questioned how the limited exceptions to the Krull good-faith exception could be applied in practice. "Under what circumstances a legislature can be said to have 'wholly abandoned' its obligation to pass constitu-

tional laws is not apparent on the face of the Court's opinion." Krull, 480 U.S. at 369, 94 L. Ed. 2d at 388, 107 S. Ct. at 1177 (O'Connor, J., dissenting, joined by Brennan, Marshall and Stevens, JJ.).

The State's argument that we should reverse the circuit court's suppression order is based solely on Krull. Krull is controlling in this case as to whether there is a federal constitutional basis for excluding the evidence seized from the defendant's home. Pursuant to Krull, exclusion of this evidence is not supportable on the ground that it was obtained by virtue of an unconstitutional statute. We nevertheless hold that the exclusionary rule arising out of our state constitution (Ill. Const. 1970, art. I, § 6) continues to afford the protection abrogated by Krull.

This court unquestionably has the authority to interpret provisions of our state constitution more broadly than the United States Supreme Court interprets similar provisions of the federal constitution. People v. Perry, 147 Ill. 2d 430, 436, 168 Ill. Dec. 817, 590 N.E.2d 454 (1992). We acknowledge that this court has long applied the lockstep doctrine to follow Supreme Court decisions in fourth amendment cases. People v. Tisler, 103 Ill. 2d 226, 241-46, 82 Ill. Dec. 613, 469 N.E.2d 147 (1984); People v. Tillman, 1 Ill. 2d 525, 529-30, 116 N.E.2d 344 (1953). We knowingly depart from that tradition here, for the reasons set forth below.

Initially, we note that our state exclusionary rule has applied in Illinois for more than 70 years to suppress evidence gathered in violation of the Illinois Constitution's prohibition against unreasonable searches and seizures. People v. Brocamp, 307 Ill. 448, 138 N.E. 728

(1923) (this court, following the United States Supreme Court's recognition of the federal exclusionary rule arising out of the fourth amendment in Weeks v. United States, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341 (1914), recognized a separate state exclusionary rule arising out of similar language in the Illinois Constitution); see also Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684 (1961) (extending the federal exclusionary rule by applying it to state governmental officials through the due process clause of the fourteenth amendment, thereby rendering our state exclusionary rule superfluous after nearly four decades of independent application). This exclusionary rule has always been understood to bar evidence gathered under the authority of an unconstitutional statute (see Brocamp, 307 Ill. 448, 138 N.E. 728 (adopting the reasoning in Weeks for purposes of our state exclusionary rule); Weeks, 232 U.S. at 394, 58 L. Ed. at 656, 34 S. Ct. at 345 (making it clear that the federal exclusionary rule was intended to apply to evidence gathered by officers acting under "legislative *** sanction")), so long as that statute purported to authorize an unconstitutional search or seizure (see Michigan v. DeFillippo, 443 U.S. 31, 61 L. Ed. 2d 343, 99 S. Ct. 2627 (1979) (recognizing a substantive-procedural distinction not at issue here; specifically holding that the fourth amendment exclusionary rule did not apply where an ordinance was held unconstitutional on vagueness grounds)). Consequently, to adopt Krull's extended good-faith exception would drastically change this state's constitutional law.

This court is obliged to evaluate the rationale underlying Krull in determining whether to adopt its extended good-faith exception for purposes of the exclusionary rule

arising out of our state constitution. Like the United States Supreme Court, this court employs a balancing test to delineate the scope of our state exclusionary rule: "Decisions involving the exclusionary rule and the Illinois Constitution's article I, section 6, require that we carefully balance the legitimate aims of law enforcement against the right of our citizens to be free from unreasonable governmental intrusion." People v. Tisler, 103 Ill. 2d 226, 245, 82 Ill. Dec. 613, 469 N.E.2d 147 (1984); cf. Krull, 480 U.S. at 352-53, 94 L. Ed. 2d at 377, 107 S. Ct. at 1168-69; Leon, 468 U.S. at 907, 82 L. Ed. 2d at 688, 104 S. Ct. at 3412. In performing this duty here, we conclude that our citizens' rights prevail. We are not willing to recognize an exception to our state exclusionary rule that will provide a grace period for unconstitutional search and seizure legislation, during which time our citizens' prized constitutional rights can be violated with impunity. We are particularly disturbed by the fact that such a grace period could last for several years and affect large numbers of people. This is simply too high a price for our citizens to pay. We therefore conclude that article I, section 6, of the Illinois Constitution of 1970 prohibits the application of Krull's extended good-faith exception to our state exclusionary rule.

Not surprisingly, several fourth amendment scholars have severely criticized Krull. E.g., 1 W. LaFave, Search & Seizure § 1.3(h), at 96-99 (3d ed. 1996). Our own appellate court has determined that the Krull good-faith exception violates the Illinois Constitution. People v. McGee, 268 Ill. App. 3d 32, 205 Ill. Dec. 883, 644 N.E.2d 439 (1994). In addition, several state courts of last resort presumably will reject Krull's extension of the good-faith exception based on their determination that the Leon

good-faith exception violates their respective state constitutions. See State v. Guzman, 122 Idaho 981, 842 P.2d 660 (1992); Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991); State v. Oakes, 157 Vt. 171, 598 A.2d 119 (1991); State v. Marsala, 216 Conn. 150, 579 A.2d 58 (1990); State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988); State v. Novembrino, 105 N.J. 95, 519 A.2d 820 (1987). This result is self-evident because one cannot reject Leon's good-faith exception and accept Krull's extension of that exception.

Before concluding, we note that our decision today does not impact the Leon good-faith exception. See People v. Turnage, 162 Ill. 2d 299, 306, 205 Ill. Dec. 118, 642 N.E. 2d 1235 (1994). Although the converse is not true, one can fully accept the rationale and result in Leon while rejecting the rationale and result in Krull. This is precisely what Justice O'Connor did in her dissent in Krull.

For the reasons stated, we affirm the circuit court's suppression order. The circuit court's judgment is therefore affirmed in its entirety.

Affirmed.

JUSTICE MILLER, dissenting:

I do not agree with the majority's conclusion that the Illinois Constitution forbids in this case what the United States Constitution clearly allows. I would therefore apply the good-faith exception recognized by the Supreme Court in Illinois v. Krull, 480 U.S. 340, 94 L. Ed. 2d 364, 107 S. Ct. 1160 (1987), and reverse the circuit court's

order suppressing the evidence seized from the defendant.

In People v. Tisler, 103 Ill. 2d 226, 245, 82 Ill. Dec. 613, 469 N.E.2d 147 (1984), this court defined the circumstances under which it is appropriate to interpret provisions of the Illinois Constitution differently from their federal counterparts:

> "After having accepted the pronouncements of the Supreme Court in deciding fourth amendment cases as the appropriate construction of the search and seizure provisions of the Illinois Constitution for so many years, we should not suddenly change course and go our separate way simply to accommodate the desire of the defendant to circumvent what he perceives as a narrowing of his fourth amendment rights under the Supreme Court's decision ***. Any variance between the Supreme Court's construction of the provisions of the fourth amendment in the Federal Constitution and similar provisions in the Illinois Constitution must be based on more substantial grounds. We must find in the language of our constitution, or in the debates and the committee reports of the constitutional convention, something which will indicate that the provisions of our constitution are intended to be construed differently than are similar provisions in the Federal Constitution, after which they are patterned."

In the present case, the majority does not point to anything in either the text or history of our state constitution that would warrant this court in reaching a result different from the one reached by the United States Supreme Court in Krull. In the absence of a valid ground for distinguishing the language of article I, section 6, of the Illinois Constitution from the fourth amendment, I would adhere to Krull and recognize, in our own state

constitution, a good-faith exception to the exclusionary rule when searches and seizures are conducted under statutes that are later held invalid. Because the statute here was not so obviously unconstitutional as to render the good-faith exception inapplicable (see Krull, 480 U.S. at 355, 94 L. Ed. 2d at 378-79, 107 S. Ct. at 1170), I would reverse the trial court's order suppressing the evidence seized in this case.

It should be noted, moreover, that the officers in the present case were not resting simply on their own interpretations of the statute but were acting pursuant to a warrant that authorized a no-knock entry; the warrant is defective only because the statute on which it depends is now found to be unconstitutional. A number of the concerns cited by the majority in opposition to Krull are therefore inapplicable to this case, in which a judicial intermediary stood between the statute and the search.

Just as the majority follows federal law in evaluating the validity of the statute under both the federal and state constitutions, so too should we follow federal law in applying the good-faith exception to the exclusionary rule. In comparing article I, section 6, and the fourth amendment, the majority correctly recognizes, "The language of the two constitutional provisions concerning unreasonable searches and seizures is nearly identical" (slip op. at 4), and the majority invokes Tisler and other decisions involving the fourth amendment in determining that the statute at issue here is invalid. Having found the statute unconstitutional under federal law, however, the majority incongruously fails to follow the same line of authority in considering the application of the good-faith exception to the exclusionary rule.

APPENDIX B

(Letterhead of)

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

February 3, 1997

Hon. Jim Ryan
Attorney General, Criminal Appeals Div.
100 West Randolph St., 12th Floor
Chicago, IL 60601

No. 80486 - People State of Illinois, appellant, v. Paul Krueger, appellee. Appeal, Circuit Court (Lake).

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on February 13, 1997.

Supreme Court, U.S.
FILED
JUN 16 1997
OFFICE OF THE CLERK

No. 96-1786

In The

Supreme Court of the United States

October Term, 1996

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

v.

PAUL KRUEGER,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

OBJECTION TO JURISDICTION AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HERCULES PAUL ZAGORAS
(*Counsel of Record*)
25 North County Street
Waukegan, Illinois 60085
(847) 336-8510
Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

RESTATED QUESTION PRESENTED FOR REVIEW

Should criminal cases decided under the Illinois Constitution have engrafted upon them the good-faith exception to the exclusionary rule set forth in the case in *Illinois vs. Krull,* a case decided in the U. S. Supreme Court with respect to warrant-less administrative searches in violation of the Fourth Amendment of the U. S. Constitution.

TABLE OF CONTENTS

Page

RESTATED QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINION BELOW 2

JURISDICTION 3

CONSTITUTIONAL PROVISIONS INVOLVED 4

STATEMENT OF THE CASE 5

REASONS FOR DENYING THE WRIT 6

CONCLUSION 11

TABLE OF AUTHORITIES

Page

CASES:

Brinkerhoff-Faris Trust & Savings Co. vs. Hill, County Treasurer, 281 U.S. 673, 50 S. Ct. 451 (1930) 8

Pruneyard Shopping Center vs. Michael Robins, et al., 447 U.S. 74, 64 L. Ed. 2d 741, 100 S. Ct. 2035 (1980) 9

OTHER AUTHORITIES:

Supreme Court Rule 10 ..... 3, 6, 7, 10

Supreme Court Rule 14 11

U.S. Constitution, 14th Amendment 4, 8

Illinois Constitution, Art. I Sec. 6 4

28 U.S.C. 1257(3) 6

BRIEF IN OPPOSITION

The Respondent, Paul Krueger, respectfully opposes the Petition for Writ of Certiorari to review the opinion and judgment of the Illinois Supreme Court dated December 19, 1996.

OPINION BELOW

On December 19, 1996, the Illinois Supreme Court affirmed the Trial Court of Lake County, Illinois in ruling that the Illinois "No-knock Statute" was unconstitutional. In the second part of its opinion, it held that under the Illinois Constitution of 1970, people had the right to be free from "unreasonable searches and seizures . . . " In so ruling, the Illinois Supreme Court ruled that it need not apply the Federal Doctrine of "Good-faith Exception to the Exclusionary Rule" announced by the U. S. Supreme Court in the case of *Illinois vs. Krull.*

JURISDICTION

The State of Illinois petition for rehearing of the Illinois Supreme Court's ruling was denied on February 3, 1997. The Petitioner here filed late with leave of Court and without objection from the Respondent as to this Petition for Certiorari.

Petitioner's Petition does not fall into one of the three categories defined in U. S. Supreme Court Rule 10. Rule 10 provides that the U. S. Supreme Court may approve a Petition for Certiorari where a U. S. Court of Appeals has made an unusual decision "as to call for an exercise of this Court's supervisory power". The other two provisions of Supreme Court Rule 10 applied to a state court, where the state court had decided "an important question of Federal Law" that either conflicts with or requires a settlement by the U. S. Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution is not applicable to this case. The Illinois Constitution is applicable and those provisions are set forth below:

Art. I, Sec. 6 of the Illinois Constitution 1970 reads:

The People shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF THE CASE

The statement prepared by Petitioner is correct except in one very important respect. No evidence was taken before the trial court which suppressed all evidence seized under the no-knock warrant. The case was submitted before the trial court on the basis of the complaint and the warrant. The Respondent had filed a Motion to Quash citing both the Illinois Constitution as well as the Federal Constitution.

Petitioner mis-paraphrases the decision of the Illinois Supreme Court. The Illinois Supreme Court ruled that "the Good-faith doctrine was not a part of Illinois Constitutional law" where the issue involved an Illinois statute which was attacked on the basis of the Illinois Constitution.

REASONS FOR DENYING THE WRIT

The State of Illinois does not petition this court to reverse the Illinois Supreme Court's ruling that the "No-knock" Statute passed by the Illinois Legislature was unconstitutional. In its petition, it lists as the sole reason for asking for this court's review the need for this court to require the Illinois Supreme Court to apply the Federal "Good-faith exception to the exclusionary rule" to all cases wherein the Illinois Supreme Court determines a search invalid because it was made pursuant to a statute found to be unconstitutional under the Illinois Constitution.

In asking this court to make such a determination, the Petitioner ignores the fact that it must show the court that a "Federal question is involved". The Petitioner invokes 28 U.S.C. 1257(3) as the authority for this courts taking jurisdiction. That statute no longer exists in the form cited. There is no sub-paragraph 3. Subparagraph (a) of Title 28 of the United States Code does permit this court to review by certiorari in cases where (a) the validity of a treaty or U. S. Statute is involved, or (b) where the validity of a Statute of any state is drawn in question on the ground of being repugnant to the Constitution, treaties or laws of the United States, or (c) any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or the statutes of the United States. Although the words "Federal question" is not used in that statutory reference, the words "Federal question" is used in U. S. Supreme Court Rule 10. This court can consider and grant certiorari where a state court of last resort has decided "an important *federal question* in a way that conflicts with the decision of

another state court of last resort of the United States or of a United States Court of Appeal"; or in cases where "an important question of Federal Law that has not been but should be, settled by this court, or has decided an important *federal question* in a way that conflicts with the relevant decisions of this court." [Emphasis added.]

The Petitioner has not attempted to fit itself into any of the categories set forth in Supreme Court Rule 10.

In Petitioner's "Reasons for granting the Writ", the Petitioner argues on the merits the wisdom of the decision of the Illinois Supreme Court. It recites that the Illinois Supreme Court majority "rests the basis for its decision on cases which are entirely unfounded and unsupported in Illinois law." (Page 5 of Petition) It concludes again in arguing the case on the merits that the Illinois Supreme Court was unwise because "The Illinois Supreme Court's refusal to apply the exception [Good Faith exception] is unwarranted, and its reliance on the Illinois Constitution without specific support is disingenuous." (Page 8 of Petition.) The fact that the Petitioner is unhappy with the Illinois Supreme Court after having lost its appeal, and having its petition for reconsideration denied, does not justify Petitioner in asking this court to second guess the Illinois Supreme Court on its determination of Illinois law and the Illinois Constitution.

In its jurisdictional paragraph, the Petitioner claims that the Respondent has asserted an alleged violation of rights arising under the United States Constitution, but Petitioner ignores the fact that the Respondent also alleged the violation of his rights under the Illinois Constitution. In fact, the Illinois Supreme Court ruled in

appendix p. 6 (Petitioner's appendix) as follows as to the defective "No-knock Statute":

> " . . . because the Defendant makes no distinction between the Federal and State provisions in his argument on this issue, we measure his Constitutional protections under both using the same standard . . .
>
> * * *
>
> . . . given this clear conflict between subsection (b)(2) and the Federal and State Constitutions, subsection (b)(2) cannot stand."

Both of those references related to the constitutionality of the no-knock statute.

It is not Respondent's job to justify or to make Petitioner's case for it. Nonetheless, Respondent cites two cases which are authority for the position that a State court has "Supreme power to interpret written and unwritten laws of its state". In the first of those two cases, *Brinkerhoff-Faris Trust & Savings Co. vs. Hill, County Treasurer,* 281 U.S. 673, 50 S. Ct. 451 (1930), the U. S. Supreme Court accepted the petition for certiorari and ruled that the State Court's decision violated a federal right because the state taxing power did not provide due process for Missouri tax payers as provided by the 14th Amendment of the U. S. Constitution. In that case, the Federal question was very clear.

In the second case cited by Respondent, the U. S. Supreme Court accepted a case involving the California Supreme Court's ruling that students protesting a United Nations resolution could utilize a shopping center as a place to promote their beliefs. And as such, the owner of

a shopping center could not deny them access for the purpose of circulating petitions opposing the United Nations resolution. The California Supreme Court ruled that California students had that right under the State Constitution and that permitting that right did not infringe upon the rights of the property owner which were protected by the Federal Constitution. The United States Supreme Court affirmed that decision in *Pruneyard Shopping Center vs. Michael Robins, et al.*, 447 U.S. 74, 64 L. Ed. 2d 741, 100 S. Ct. 2035 (1980). In that case, this court upheld the decision of the California Supreme Court but acknowledged that there was a Federal Constitutional question involved.

Compare that decision with the present case where the Petitioner herein points to no substantial Petitioner's interest under any Federal law or Constitution. Measure the Petitioner's stance here with the language in the *Pruneyard case* which said on p. 81 of the U. S. Report as follows:

> " . . . the authority of the State to exercise its police power or its sovereign right to adopt its own Constitutional individual liberties [is] more expansive than those conferred by the Federal Constitution . . .
>
> * * *
>
> . . . so long as the restrictions do not amount to a taking without just compensation or contravene any other Federal Constitutional provision . . . "

The Illinois Supreme Court ruled that under its Constitution of 1970, a person has greater rights than under

the Federal Constitution. That reasoning was first enunciated in 1930 and reiterated in 1980 by this U. S. Supreme Court.

Petitioner had a duty to bring itself within the purview of Supreme Court Rule 10 or within the statutory language of Title 28. It has failed on both counts. It has attempted in its petition to argue the merits of the case, but has failed to show any Federal question as required for this Court's consideration for a writ of certiorari.

CONCLUSION

Respondent files this brief in opposition but has maintained throughout that this court should not take jurisdiction because of the Petitioner's failure to comply with Supreme Court Rule 14 which requires that Petitioner provide "a direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10." Respondent again asks this court to deny certiorari. The Petition does not state why this Court should take jurisdiction.

Respectfully submitted,

PAUL KRUEGER

HERCULES PAUL ZAGORAS
25 North County Street
Waukegan, IL 60085
847-336-8510